

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
KEY WEST DIVISION**

Case No. 08-10106-CIV-MARTINEZ/BROWN

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DAVID W. DREIFORT and,)
DENISE DREIFORT,)
)
Defendants.)
_____)

AMENDED COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the National Oceanic & Atmospheric Administration (“NOAA”), files this complaint and alleges as follows:

1. This action arises under the National Marine Sanctuaries Act (“NMSA”), 16 U.S.C. §§ 1431 *et seq.*, for damages and response costs resulting from the unauthorized placement of artificial lobster habitats, often referred to as ‘casitas,’ within the Florida Keys National Marine Sanctuary (“FKNMS”).

PARTIES

2. Defendants David W. Dreifort and Denise Dreifort (“the Dreiforts”) are individuals, and on information and belief reside in Cudjoe Key, Florida.

JURISDICTION AND VENUE

3. This Court has jurisdiction in this matter pursuant to the NMSA, 16 U.S.C. § 1443(c), and 28 U.S.C. §§ 1331 and 1345. Venue is proper within the Southern District of

Florida pursuant to 28 U.S.C. §§ 89(c) and 1391(b) because it is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, and pursuant to 16 U.S.C. § 1443(c)(2) because it is the judicial district in which the defendant resides and where the destruction of, loss of, or injury to sanctuary resources occurred.

GENERAL ALLEGATIONS

4. From at least 1990 through the present, the Dreiforts have been placing artificial lobster habitats, or casitas (“the Dreifort Casitas”) at various locations within the FKNMS, and prior to the establishment of the FKNMS in 1990 within the area that now comprises the FKNMS, for purposes of attracting, trapping, and harvesting lobsters, usually on hard-bottom marine biota habitat.

5. Although the number of Dreifort Casitas placed within the FKNMS has varied over time, there have generally been hundreds of Dreifort Casitas located within the FKNMS at any given time from at least 1990 through the present.

6. Among other consequences, the Dreifort Casitas prevent sunlight from reaching organisms that require sunlight in order to survive and remain healthy, and physically scour the surfaces upon which they rest.

7. Sanctuary resources are adversely affected as a result of the placement of the Dreifort Casitas in the FKNMS, including but not limited to organisms such as corals, gorgonians, sponges and other benthic sessile biota, which constitute essential habitat for fish and other sea life.

8. The Dreifort Casitas have caused, and continue to cause, the destruction, loss of, or injury to, sanctuary resources, within the meaning of the NMSA, in the manner described in this Complaint.

9. NOAA has incurred and will continue to incur response and assessment costs, within the meaning of the NMSA, as a result of the placement of the Dreifort Casitas in the FKNMS, including but not limited to costs incurred by NOAA in responding to the discovery of the Dreifort Casitas, in assessing injury to and losses of sanctuary resources caused by the Dreifort Casitas, in developing a plan to restore such sanctuary resources, and in implementing primary and compensatory restoration and restoration monitoring.

10. The Dreiforts destroyed, caused the loss of, and/or injured sanctuary resources, within the meaning of the NMSA, in the manner set forth in this Complaint, and are therefore jointly and severally liable to the United States for the response costs and damages referenced in Paragraph 9 of this Complaint, plus interest and enforcement costs pursuant to 16 U.S.C. § 1443(a)(1).

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays:

A. That judgment be entered in favor of Plaintiff United States of America against Defendants David W. Dreifort and Denise Dreifort for all response costs and damages incurred, or to be incurred, by the United States as a result of the placement of the Dreifort Casitas within the FKNMS, along with pre-judgment and post judgment interest and enforcement costs; and

B. For such other and further relief as the Court deems just and proper.

Respectfully Submitted,

Dated: March 19, 2009

/s/ John C. Cruden
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Dated: March 19, 2009

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